

A) Remarks:

Applicant makes an affirmative election of the species of Figure 17, claims 1 - 5, 8 - 13, 17 and 18. However, as pointed out on page 2 of the Office Action, upon the allowance of a generic claim, Applicant will be entitled to consideration of claims to additional species. In view of the following remarks, it is believed that Applicant is clearly allowed the generic claim 1 and that therefore claims 6, 7 and 14 - 16 should also be permitted as allowable and no longer withdrawn.

The Examiner rejects claims 1, 5, 8, 10 and 17 under 35 U.S.C. § 102(b) as being anticipated by Sevrain. The Examiner states that “Sevrain discloses in Figure 2A elongated plates, a lock assembly 37, which prevents further plate separation but allows for shortening, means for permitting the distance to be shortened comprising protrusion 36 and the slots through which they are received, and compression spring means 39.” It is clear from this statement that the Examiner has completely ignored the principal and controlling language of Applicant’s claim 1 and does not have a clear understanding of the present invention as claimed.

In claim 1 Applicant claims his improvement as “comprising compression spring means housed in said assembly and configured for continuously urging said screw receiving elements at opposite ends together for thereby providing continuous compressive loading on bone graft material disposed between the vertebral elements”. Sevrain teaches the exact opposite.

Please note the paragraph in Sevrain beginning at line 41, in column 6, wherein it is stated:

“ As in a cigar cutter, spring 39, as shown in FIG. 2A is preferably provided with upper and lower plates 30 and 32, for instance in the guideways 38, such that the prosthesis P is biased towards its extended position.” [Emphasis Supplied]

Accordingly, the springs 39 of Sevrain bias his prosthesis toward the extended position, completely contrary to the teachings of the apparatus of the present invention. The present invention requires the prosthesis or screw receiving elements at opposite ends are continuously urged together for thereby providing continuous compressive loading on bone graft material disposed between the vertebral elements.

Accordingly, the teachings in Sevrain are totally contrary to that of Applicant's and cannot possibly obtain the desired results of the present invention. In fact, the teachings of Sevrain destroy the intended results accomplished by Applicant.

Claims 2 - 4 and 11 - 13 have also been rejected under 35 U.S.C. § 103(a) as being unpatentable over Sevrain in view of Olerud. However, for the same reasons previously given, reconsideration is respectfully requested. It is not possible for this combination under the circumstances to provide a basis of rejection.

In view of the foregoing remarks, reconsideration is respectfully requested along with Notice of Allowance.

Respectfully submitted,

CAROTHERS AND CAROTHERS



Floyd B. Carothers
Attorney for Brian E. Dalton
Fort Pitt Commons, Suite 500
445 Fort Pitt Boulevard
Pittsburgh, PA 15219

FBC:jkc
Reg. No. 24,252
(412) 471-3575
(412) 281-2180
Pittpatent@aol.com

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